

No. 4:10-CV-97-D

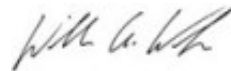
MEMORANDUM & RECOMMENDATION

Any individual, after any final decision of the Commissioner made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after mailing to him of notice of such decision or within such further time as the Commissioner may allow.

42 U.S.C. § 405(g).

Mailing” has been interpreted as the date of receipt by the individual of the Appeals Council’s Notice of Decision. 20 C.F.R. § 422.210(c). The date of receipt is presumed to be five days after the date of such notice, unless there is a reasonable showing made to the contrary. 20 CFR §§ 404.901 and 422.210(c). Here, Plaintiff has demonstrated that she received the Appeals Council Notice of Decision on May 20, 2010 (DE 16-1). Plaintiff filed a motion to proceed *in forma pauperis* (“IFP”) on July 20, 2010. A copy of Plaintiff’s proposed complaint accompanied the motion to proceed IFP. Her motion to proceed IFP was granted on August 2, 2010, and her Complaint formally became a part of the record in this matter on that same date. Based on these facts, the undersigned finds that Plaintiff’s complaint was timely filed. Accordingly, it is HEREBY RECOMMENDED that Defendant’s motion to dismiss be DENIED.

SO RECOMMENDED in Chambers at Raleigh, North Carolina on Monday, January 24, 2011.



WILLIAM A. WEBB
UNITED STATES MAGISTRATE JUDGE